

APPEAL FROM ORDER No 468 of 1990

Civil Application No. 3327 of 1990

Hon'ble MR.JUSTICE A.M.KAPADIA

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- of India, 1950 of any Order made thereunder?

- [illegible]

Versus

GANGABEN B PATEL

Appearance:

MR AR MAJMUDAR, learned advocate for MR PB MAJMUDAR,  
learned advocate for appellant.  
NOTICE SERVED for Respondents.

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/06/1999

ORAL JUDGEMENT

1. In this appeal, appellant herein has brought in challenge the order dated 24.10.1990, recorded below Ex.5, in Special Civil Suit No. 412 of 1989, by learned 4th Joint Civil Judge (S.D.), Vadodara, whereby he disallowed application Ex.5 and vacated the order of

status quo granted earlier in favour of the plaintiff and against defendant No.2.

2. Present appellant is the original plaintiff while present respondents are original defendants and hence for the sake of convenience and brevity, the parties are hereinafter referred to as 'the plaintiff' and 'defendants' respectively, in this judgment.

3. Short facts which have given rise to the present appeal, may be narrated, in a nutshell.

3.1. Plaintiff and defendants were knowing each other since many years. Defendant No.1 was the owner of agricultural land bearing Survey No. 40/5 of village Raval, Taluka Vaghodia, District Vadodara (hereinafter referred to as 'the suit land'). Defendant No.1 entered into an agreement dated 1.8.1981 with the plaintiff to sell the suit land to the plaintiff and in consideration thereof the plaintiff has paid Rs.12,100/- as 10% of the total sale price by way of earnest money, by cheque bearing No.217161 drawn on Canara Bank, Raopura Branch, Vadodara and defendant No.1 has also endorsed the receipt thereof on the document i.e., agreement to sell.

3.2. As per the agreement, defendant No.1 was to obtain necessary permission from Revenue Department. As per the terms of the agreement, defendant No.1 was to obtain necessary permission to convert the suit land into non-agricultural use, was to prepare lay out plan, he was to obtain title clearance certificate and to prepare a map after measuring the suit land and on completion of all the necessary formalities, defendant No.1 was to intimate the plaintiff and thereafter on payment of the remaining amount of the agreed price, as per the agreement to sell, defendant No.1 was to convey the title of the suit land by executing sale deed in favour of the plaintiff.

3.3. It was further the case of the plaintiff that in spite of the terms and conditions narrated in the agreement to sell, defendant No.1 was not doing any formality and thereby he refused to convey the title in favour of the plaintiff as per terms and conditions mentioned in the agreement to sell and, therefore, the plaintiff contacted defendant No.1 and asked him to convey the suit land by executing sale deed in his favour.

3.4. Upon the said request of the plaintiff, defendant No.1 replied that he was not in possession of the suit

land as he has already sold the suit land to defendant No.2 and deed of conveyance was also executed by him in favour of defendant No.2. Defendant No.1 also did not repay the earnest money which was paid to him by the plaintiff. It was further case of the plaintiff that in spite of registered agreement to sell, the suit land was conveyed in favour of defendant No.2 by defendant No.1 illegally by executing sale deed which has infringed the right of the plaintiff and this has caused substantial damages to the plaintiff. The plaintiff, therefore, filed the suit for declaration that the sale deed executed by defendant No.1 in favour of defendant No.2 is void and not enforceable at law and hence is liable to be cancelled. He also prayed the consequential relief to restrain the defendant No.2 not to transfer the suit land to third party and also not to construct on the suit land.

3.5. Along with the suit, Ex.5 application was also submitted wherein interim relief was claimed to the effect that the defendants may be restrained from transferring or alienating the suit land to third party and also not to put up any construction thereon during the pendency of the suit wherein contention regarding prima facie case, balance of convenience and irreparable injury was also canvassed in favour of the plaintiff.

3.6. Defendant No.1 appeared and contested the suit by filing written statement wherein, inter alia, it was averred that defendant No.3 who is a relative of the plaintiff, was residing at Mumbai. It was further averred that before ten years, Government of Gujarat introduced a scheme for industries with a subsidy by the Government in Vaghodia Taluka and under that scheme so many industrialists and investors from Mumbai as well as Vadodara were eager to purchase the land of Vaghodia Taluka. It was further averred that defendant No.1 being an illiterate person and did not even know the signature, the plaintiff, defendant No.3 and other commission agents obtained his thumb impression on blank paper by giving small amount as earnest money. He, therefore, had no knowledge about the said document which is called agreement to sell. It was further case of defendant No.1 that after giving small amount as earnest money, plaintiff and defendant No.3 never came to the village and they were not seen for 7 to 8 years. It was further averred that since defendant No.1 was in need of money she sent her relatives to the plaintiff at Vadodara demanding remaining amount but plaintiff evaded by giving false and evasive reply and excuses and thereby did not pay the amount as per the agreement. It was further

pleaded that the document, i.e., agreement to sell was not registered. It was also contended that the suit is not maintainable and since the suit was filed at a belated stage in 1989, it is time barred and it was further contended that the defendant No.2 is in possession of the suit land as a bona-fide purchaser and is taking the crops from the suit land and, therefore, Ex.5 application may be rejected and the interim relief may be vacated.

3.7. The learned trial Judge, after hearing learned advocates for the parties and considering the documents on record, recorded following conclusions:

- (i) At the time of entering into the agreement to sell the suit land, possession was not handed over to the plaintiff.
- (ii) Defendant No.2 is in possession of the suit land as a purchaser.
- (iii) Agreement to sell was executed in 1981 and the suit was filed in 1989.
- (iv) Plaintiff has no prima facie case and the balance of convenience has tilted in favour of the defendants.

3.8. In view of the above findings, learned trial Judge recorded the finding against the plaintiff by disallowing the application Ex.5 and thereby he vacated the order of status quo which was granted earlier.

It is this order which is now challenged before this Court.

4. Learned advocate A.R. Majmudar for learned advocate Mr. P.B. Majmudar for the appellant/plaintiff has made his elaborate submissions. None appeared for the respondents.

5. Mr. Majmudar has contended that by virtue of agreement to sell dated 1.8.1981 which is a registered one, right is created in favour of the plaintiff and the learned trial Judge has wrongly mentioned in the order that the said agreement to sell is not registered. He further contended that in spite of the said agreement to sell, defendant No.1 has conveyed the suit land in favour of defendant No.2 and possession was also handed over to him and, therefore, said conveyance itself is void ab-initio and hence it does not confer any title or right

in favour of defendant No.2 as defendant No.2 is not a bonafide purchaser. He further submitted that there is all the possibility that at the end of the trial the plaintiff will succeed in the suit and there is all possibility that the sale deed executed in favour of defendant No.2 by defendant No.1 may be cancelled. Under these circumstances, he prayed that the Appeal from Order may be allowed by granting the order of status quo which was also granted by the learned trial Judge at the time of presentation of the suit and was vacated after hearing all the parties concerned. However, while entertaining the Appeal from Order, this Court has passed order on Civil Application No. 3327 of 1990 granting order to maintain status quo by all the parties till decision of the appeal.

6. After having considered the submissions advanced by learned advocate A.R. Majmudar, it could be seen that the learned trial Judge has observed in his judgment that the agreement to sell dated 1.8.1981 was executed by defendant No.1 in favour of the plaintiff, which, according to the learned trial Judge is unregistered. Learned trial Judge has also observed in his order that after the said agreement was executed, defendant No.1 sold the suit land to defendant No.2 by executing a sale deed and possession of the suit land was also handed over to defendant No.2 by virtue of the said sale deed. Since the possession was not with the plaintiff and it was with the defendant No.2 and as the suit was filed at a belated stage, that is, eight years after the agreement to sell was executed, the plaintiff could not successfully prove the prima facie case.

7. In view of the above, I am of the opinion that following questions are required to be adjudicated by the trial court:

- (i) Whether the agreement to sell entered into between the plaintiff and defendant No.1 is registered or not?
- (ii) Whether the defendant No.2 is a bona fide purchaser of the suit land?
- (iii) Whether the suit is barred by law of limitation as it was filed eight years after execution of the agreement to sell deed?
- (iv) Whether defendant No.1 being an illiterate person his thumb impression was obtained on blank paper as averred by defendant No.1 in her written

statement?

8. In the aforesaid premise, I am of the opinion that there is a prima facie case in favour of the plaintiff. I am also of the opinion that the learned trial Judge has without considering the aforesaid aspects, vacated the order of status quo granted earlier in favour of the plaintiff. According to me, ultimately if the plaintiff proves his case, multiplicity of proceedings would arise in case defendant No.2 who is at present in possession of the suit land conveys the title to third party. In view of this, there must be an order to maintain status quo with respect to the suit land. Though the suit land is in possession of defendant No.2, of course, he is also required to be restrained from transferring or alienating the suit land or putting up any construction thereon till the disposal of the suit. This Court has also ordered the parties to maintain status quo till decision of the appeal while recording the order on Civil Application No. 3327 of 1990.

9. In the result, this Appeal from Order succeeds. Resultantly, Appeal from Order is allowed by granting order of status quo in favour of the appellant/plaintiff and against defendants and more particularly against defendant No.2/respondent No.2 herein . He is restrained from transferring or alienating the suit land or putting up construction thereon till decision of the suit.

10. The transaction between the plaintiff and defendant No.1 was of 1981 and the suit was filed in 1989 and, therefore, learned trial Judge before whom the suit is pending for final disposal, shall dispose of the suit as expeditiously as possible and preferably within a period of one year from the receipt of the Record and Proceedings after giving opportunity of hearing to all the parties concerned. It may also be made clear that no observation made hereinabove shall be construed as an expression or finding with regard to merits or demerits of the averments made in the plaint and in the written statement filed by the parties and the learned trial Judge shall dispose of the suit on merits uninfluenced by whatever observation has been made by this Court hereinabove. It may be appreciated that the aforesaid observation is made with regard to the limited question of the granting of order of status quo with a view to avoid multiplicity of the proceedings.

10. In the premise, Appeal from Order is allowed. Rule and interim order passed on the Civil Application No. 3327 of 1990 granting interim relief is made

absolute till the decision of the suit. In the facts and circumstances of the case, there shall be no order as to costs.

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(karan)